

Constitution is Higher Than the Paris Treaty

That Instrument Makes Natives of Porto Rico Citizens of United States.

An Able Opinion Rendered by Mr. Isaac Lobe
Straus, Counsel for the Supervisors
of Elections for the City
of Baltimore.

THE city of Baltimore has just undergone a very spirited discussion over the rights of former citizens of Porto Rico to register and vote in that city without taking out naturalization papers. Several weeks ago a former resident of Porto Rico applied for naturalization in the supreme court of the District of Columbia. The court without passing any formal decision upon the question declared orally that he did not believe it necessary for the applicant to become naturalized; that he had already been made a citizen of the United States by the extension of the sovereignty of the United States over Porto Rico.

This is in line with the opinion given by Judge Este of the United States district court of Hawaii regarding the citizenship of a native of the island of Guam. In that case Judge Este held, it will be remembered, that in his opinion the native of Guam was already a citizen of the United States by the extension of United States sovereignty over the land of his birth.

The question of the citizenship of the men who desired to register in the city of Baltimore was raised by the application of Dr. J. Del Valle to register in the Sixth precinct of the Thirteenth ward. His application was refused by the registering board on the ground that he was not a citizen of the United States, although it was admitted that the doctor had resided in the state of Maryland the necessary one year to gain residence in the state.

Dr. Del Valle held that he did not have to become naturalized to secure citizenship in the United States; that he was already a citizen, having been made so by the extension of the sovereignty of the United States over Porto Rico. Dr. Del Valle was the first mayor of the city of San Juan, Porto Rico, under the American flag, and he further held that when he was appointed chief mayor of the city he took an oath in which he swore to support and maintain the constitution of the United States, and that he could not have held that office and taken the necessary oath unless he was a citizen of the United States. A little over one year ago the doctor moved to Baltimore and took up his residence with his son, who is a dentist in that city.

The board of supervisors of elections referred the question to Mr. Isaac Lobe Straus, counsel for the board, for an opinion as to the right of Dr. Del Valle and several other natives of Porto Rico to register. Mr. Straus rendered an opinion on September 24, in which he held that the Porto Ricans were citizens of the United States and that having resided in the state of Maryland the necessary length of time were entitled to register. Under this opinion Dr. Del Valle and his son, Dr. F. Del Valle, Jr., 1213 McCulloch street; Prof. Theodore Aguilar, and Augusto Ortiz, 221 North Paer street, and Jose S. Belaval, 411 West Fayette street, registered, the first two in the Sixth precinct of the Thirteenth ward; Messrs. Aguilar and Ortiz in the Fourth precinct, Second ward, and Belaval in the Tenth precinct, Second ward. All were registered as "citizens by annexation." All five men were born in Porto Rico.

Called Forth Counter Opinion.

The opinion of Mr. Straus, counsel for the supervisors of elections, brought out a strong counter opinion of the status of the Porto Ricans by ex-Attorney General George B. Gaither, who endeavored to build a platform to stand on, after the manner of the supreme court of Hawaii, in which he held the Porto Ricans to be aliens and "people without a country." In response to Mr. Gaither's opinion Mr. Straus prepared the following opinion for the Baltimore Sun, which was published in that paper on September 27th:

"Mr. Gaither's interview was brought to my attention this morning. Mr. Gaither's opinion as a lawyer and otherwise is always to be respected, but in this case the authorities are altogether against him. He cites but a single case, the decision in Elk vs. Wilkins (112 U. S. 94), which has not the least bearing whatever on the question involved in the Del Valle cases, for the well known reason that the Indian tribes in this country have always been held by the courts to be and treated by the government as foreign nations, and a member of one of their tribes, although renouncing his tribal relationship, could no more become a citizen of the United States without naturalization by a court than a citizen of Russia, Germany or any other foreign country.

"In fact, it seems to me that Mr. Gaither has missed entirely the point in the case. He says: 'Under our laws only those persons are entitled to vote in this

state who were either born under the jurisdiction of the United States or who have become naturalized citizens through the process of the courts.' Such is not the law at all. The law on this subject is furnished by the constitution of Maryland, which provides that 'every male citizen of the United States of the age of 21 years or upward, who has been a resident of the state for one year and of the legislative district of Baltimore city, etc., shall be entitled to vote in the ward or election district in which he resides, etc.'

Question of Citizenship.

"The sole question, then, is whether Dr. Del Valle is a citizen of the United States. Mr. Gaither seems to be of the opinion that one not born within the jurisdiction of the United States can become a citizen thereof only by naturalization through the courts. On the contrary, Mr. Justice Cooley, in his Constitutional Law, page 244, says:

"Naturalization may be effected by the acquisition of the United States of foreign territory with its people, who thereby become citizens of the United States. In this manner the people brought within the jurisdiction of the Union by the acquisition of Louisiana, Florida and portions of Mexico became citizens."

"If Mr. Gaither, who, according to the report of a newspaper in which his opinion was published, seems inclined to inject political considerations into what is purely a legal question, is not convinced by the authority of the late Justice Cooley, who was probably the most distinguished republican jurist of his day, he may be more impressed with the views of the late William H. Seward, the intellectual leader of the republican party and one of the most eminent publicists of his generation. In the senate, in July, 1850, speaking of the people of New Mexico over which no territorial government had as yet been erected, Mr. Seward said:

"They have undergone a change of sovereignty only; but in all other respects their position and their rights are unchanged. What they lost the rights secured to them by the constitution of Mexico they acquired the rights of American citizens secured to them by the constitution of the United States. These rights involve the protection of their lives, of their liberty, of their property and of their territory. All of these are rights which the United States can lawfully deprive no community on earth." (Works, Vol. I, p. 122).

Mr. Seward's Position.

"Mr. Seward does not say that they became citizens under the treaty by which the territory was acquired, but under the constitution."

"Charles Sumner expressed the same view.

"Reverend Johnson, who, as a whig, represented Maryland in the senate in 1848, likewise declared in an elaborate and convincing argument in the senate that the people of New Mexico and California were citizens of the United States under the constitution by reason of the annexation of their territory to the union, which territory, he vigorously contended, thereby became a part of the United States over which the constitution as proprio vigore extended.

"In addition to the authority of Chief Justice Taney and Mr. Johnson, I am prepared to show that William Pinkney and William Wirt held and asserted the same doctrine as the sound constitutional law upon this subject, and, furthermore, that all the leading statesmen of the republic from the time of its foundation until recently, with the sole exception of Mr. Webster, whose views, however, differed widely from those of Mr. Gaither, all likewise.

Under the Constitution.

"Turning now for a moment to the decisions of the supreme court, that tribunal has invariably considered inhabitants of the territories as citizens of the United States, not by treaty stipulation to that effect, but by the constitution and by virtue of international law. Thus the allegiance and nationality of the inhabitants of acquired territory define their citizenship. According to Chief Justice Marshall (5 Peters, 511) 'the same act which transfers their territory transfers the allegiance of those who remain in it' and Chief Justice Fuller declared that 'the nationality of the inhabitants of territory acquired by conquest or cession becomes that of the government under whose dominion they pass.' (Boyd vs. Thayer, 114 U. S. 159). And in Minor vs. Happersett (21 Wallace) Chief Justice Waite defined the term 'citizens of the United States' in a way that leaves no doubt on the subject. 'Citizenship of the United States must not be confused with questions of ac-

rage in the territories. Suffrage is not a necessary element of citizenship and congress may deny the citizens of the United States residing in the territories the right of suffrage. But when a citizen comes from a territory where he is or may be refused the right to vote into the state of Maryland the municipal laws of this state, the foundation of which is the state constitution, regulate his rights as to suffrage, subject only to the Fifteenth amendment, and if he has been here for a year and the other requisites concur he is entitled to vote.

"When Mr. Gaither contends that the absolute terms of the treaty of Paris control and ascertain the law he begs the whole question, for treaties are no more the supreme law of the land than acts of congress, both being equally subordinate to the constitution, and the government cannot add to its powers or evade the limitations of the constitution by an exercise of the treaty-making power vested in the executive and senate. This has been expressly held with reference to its powers over acquired territory. Accordingly, if the ceded territories are part of the United States and subject to the constitution, then their native inhabitants are citizens of the Union, and one of two conclusions is irresistible—either that the treaty of Paris must be construed subordinated to the constitution so as to render the power over the transferred domain which it vests in congress not an arbitrary and unbounded one, or the particular stipulation of the treaty in question is unconstitutional and void."

VIEWS OF PHILADELPHIA

NORTH AMERICAN

Under the heading "Our Island Citizens," the Philadelphia North American of September 26, taking the application of Dr. Del Valle for registration as a text, says:

"Judge M. M. Este of the United States district court of Hawaii has decided that a native of the island of Guam is an American citizen and needs no naturalization papers." Under his ruling a native of Guam will probably vote at the next election in Honolulu, if he can meet the qualifications required by the act of congress creating the Territory of Hawaii. This decision virtually asserts the principle that Guam, the Philippines and Porto Rico were made parts of the United States by the ratification of the treaty of Paris.

Up to the present time the executive officers of the government have held that because congress took care to avoid declaring the inhabitants of Porto Rico to be citizens of the United States it declared by implication that they were not such citizens, but were citizens of Porto Rico, who as such are entitled to the protection of the United States. The legal points raised by this executive action, however, must be passed upon sooner or later by the United States supreme court. A case has recently come up in Baltimore which may serve as a final test. Dr. Francisco Del Valle, Sr., who was secretary of the interior during the military government of Porto Rico, and his son, native Porto Ricans, have applied for registration as voters in the city of Baltimore. Dr. Del Valle claims the right to register on the ground that he is a citizen of the United States.

"The policy of the treasury department was also shown the other day when a representative of the Hawaiian Sugar Planters' association called on Assistant Secretary Taylor to ascertain whether he could legally go to Porto Rico and contract with Porto Rican laborers to go to Hawaii to work on sugar plantations. He was told that because of the alien contract law he could not do so, but a means of evading the law was indicated. It was suggested that if the Porto Ricans should come to this country he could then enter into contracts with them to go to Hawaii.

The All-Important Question.

"The coming of a few voters from our newly acquired islands is not a matter of great consequence to the people of this mainland. The really important thing is not what are the rights of suffrage of the Filipinos and Porto Ricans, but what are their rights of commerce? They are no longer citizens of Spain and they have no nationality of their own. If they are American citizens they are entitled to all the commercial and political privileges that the constitution assures to those citizens who make their dwelling place on this continent. That follows as one of the penalties we must pay and one of the advantages the islands must enjoy in consequence of our annexation of Spanish territory in both oceans. Hawaii has been made a territory and has full commercial intercourse with all parts of the Union. Porto Rico, however, has been given the right of limited commercial intercourse, with the promise of ultimate freedom of trade. But towards the Philippines and Guam we have assumed the attitude of a foreign power, while at the same time we have exercised the right of absolute sovereignty in defining their relations to us. It is not possible for us to keep customs barriers standing at both ends and to prohibit free migration to and fro unless we propose to govern them as subject colonies."

THE UNITED STATES COURT.

Adjourned to Meet on Tuesday Next

—The Marshall Case.

In the United States court yesterday the petitions for writ of habeas corpus in behalf of Wong Kim Lock, Wong Kim Po, Wang Chong and Wong Kim Pa were quashed on motion of United States Attorney Baird. The petitions were merely defective and by leave of the court the plaintiffs' attorney will file an amended petition.

The United States court then adjourned until 10 a. m. next Tuesday. At that time it is expected that Judge Bates will be ready with a decision in the Marshall case.

IT WAS A PRETTY CHURCH WEDDING

Marriage of Frederick C. Smith and Miss Alice Wall.

MANY FRIENDS WERE PRESENT

CEREMONY WAS PERFORMED BY THE REV. HAMIL- TON LEE.

A Wedding Supper Was Served to a Few Intimate Friends at the Home of the Bride's Mother.

The wedding of Miss Alice Wall and Frederick C. Smith at St. Andrew's Cathedral last night was one of the prettiest of the number of fine weddings that have taken place in the Episcopal church here. The church itself was beautifully decorated in green and white, calla lilies, white asters, maiden-hair ferns and potted plants and palms predominating. The pillars of the nave and the chapel rail were a mass of ferns and white flowers and over the chancel was spread a white gauze screen draped with sprays of the maiden-hair fern. The altar was loaded with asters and ferns.

Promptly at 8 o'clock the bridal party entered the church and the march up the aisle to the head of the nave, where the ceremony was performed, was to the beautiful strains of the Lohengrin wedding march, to which the words of the hymn, "Faithful and True, We Lead You Forth," were arranged. Wray Taylor presided at the organ and the choir of the Second Congregation assisted.

Preceded by the ushers and two little pages, the bride, leaning on the arm of her brother, T. E. Wall, made her way to where the groom and the Rev. Hamilton Lee awaited her. The ceremony was performed at the chancel rail and during the marriage Paul Egry played the intermezzo from "Cavalleria Rusticana" most beautifully, with the organ accompanying. After the ceremony and as the newly wedded couple made their way to the altar for the benediction the "Wedding Psalm" was rendered. From the benediction the couple went to the vestry to sign the register and the organ and choir rendered the march which is always given when one of the clergy is married. From the vestry to the carriage the bridal party was preceded by the two little pages, who strewn flowers along the way.

After the wedding the bridal party and a few intimate friends went to the residence of the bride's mother, where a light supper was served. Walter F. Dillingham was best man and Miss Sadie Carter maid of honor. Messrs. A. F. and W. E. Wall, W. H. Babbitt and R. W. Shingle were ushers and little Douglas Damon and Murill Howatt pages.

The decorations in the church were by Mrs. Carrie Rigg, Little Paty and Myra Angus. Mr. and Mrs. Smith left for Makaleia in a special train last evening, where their honeymoon will be passed.

Another Flood.

The rains of the past few days clogged the outlet of the Makiki reservoir last night and the overflow broke out of the bank of the ditch and found its way down Punchbowl to School street and from there to Nuanu and Fort. Most of the water went to the low land back of the Kaumakapili church. Lieutenant Leslie of the mounted patrol and a squad of men cleared the outlet so the water could follow its usual course.

PLANS COMPLETED FOR RECEPTION OF SHRINERS

THEY ARE EXPECTED TO ARRIVE ON ZEALANDIA TOMORROW.

Women Will Put on Finishing

Touches on Decorating Ma- sonic Temple Today— Hinerary.

Plans are complete for the coming of the Shriners. If no untoward fate intervenes they will arrive tomorrow on the Zealandia. They will be met with a grand welcome. The wealth of the tropics will be in the handshakes and greetings of their Hawaiian brethren.

The committee on decorations was busy yesterday afternoon adorning the interior of Masonic Temple. Palms, ferns and potted plants were brought in. This afternoon the women will take charge of the decorations and put on the finish. They will add flowers to the heavier background of green and by nightfall all will be ready.

The merchants have promised the committee that ample evidence of their interest in the Shriners will be found in their window decorations tomorrow. Banners of welcome will be thrown across the streets at different places.

The visitors by the Masonic women in the Masonic Temple from 3 to 6 p. m. If the arrival is not until in the afternoon the reception will be from 7 to 9 and if the visitors do not come until after 4 p. m. the reception will be declared off altogether. No other changes were made in the program or itinerary, which follows:

Monday, Oct. 22.—Excursion by rail to Waialua. Pilgrims will start from railroad depot at 9 a. m. A visit will be made to Waialua sugar mill and the wants of the inner man attended to by a luncheon at Haleiwa.

Tuesday, Oct. 23.—Reception by Governor Dole at the capitol at 10 a. m. Drive to Alahua, the residence of Brother A. S. Cleghorn, thence to his neighbor, Brother Prince David Kawananakoa. Here a luncheon will be served at 2 p. m. The surf will await those who wish to avail themselves of its embrace. The many relics and curios of the royal family will be open to the inspection of the pilgrims.

Wednesday, Oct. 24.—Excursion to Nuanu Pali, to the Punchbowl and the Lions of Honolulu.

The ladies' reception committee is composed of the following:

Mrs. J. M. Oat, chairman; Mrs. Fred Whitney, Mrs. E. I. Spaulding, Mrs. J. H. Greig, Mrs. J. C. Evans, Mrs. W. A. Atwater, Mrs. C. B. Cooper, Mrs. W. L. Howard, Mrs. F. B. Auerbach, Mrs. L. I. Prescott, Mrs. C. L. Crabbe, Mrs. J. W. Harvey, Mrs. J. F. Melanthy, Mrs. T. P. Harris, Mrs. Theo. Hoffman, Mrs. B. F. Dillingham, Mrs. J. O. Lutted, Mrs. H. E. Cooper, Mrs. F. B. West, Mrs. Oscar White, Mrs. K. B. Reedy, Mrs. Mamie Phillips, Mrs. C. A. Galbreath, Mrs. H. E. Webster, Mrs. T. R. Day, Mrs. A. R. Rasmussen, Paul Neumann, Mrs. T. A. Bowman, Mrs. C. A. Graham. On decorations—Mrs. H. H. Williams, chairman; Mrs. Chas. Herrick, Mrs. J. L. Henkel, Mrs. Louis Marks, Mrs. Ed Towse.

GRIM DEATH COMES TO MRS. EMMA STEIGMANN.

Mrs. Emma Steigmann, who was shot by her husband, Benjamin Steigmann, last Tuesday evening in a room in the Honolulu hotel on Nuanu street, died at the Queen's hospital at 5:50 yesterday evening. There was almost no hope for her recovery from the start, as either bullet which struck the woman made a wound almost necessarily fatal. The surgeons took the only chance that might exist to save her life, but it was to no avail.

MODIFYING DEEDS. Carelessness in Drawing Does Not Work Invalidation.

The supreme court handed down a decision yesterday holding as follows: "Where the evidence clearly shows that a deed, through carelessness or mistake of the draftsman, does not express the intention of the parties thereto, a court of equity will reform the same so as to express the intention of the parties at the time of its execution."

The judges sitting were Frear and Galbraith and Mr. Stanley in place of Perry, who was absent. The decision confirms the judgment of the lower court. The parties to the suit were Bruce Cartwright, Edith W. Morton and Maud Auld vs. Charlotte K. Iaukea and Curtis P. Iaukea.

Arthur Hill's Watch.

A watch is at the police station awaiting a claimant. On the inside cover is scratched the following inscription: "Arthur Hill, 125 Royston Street, Edge Hill, Liverpool."

Jack the Hugger.

A Chinese supposed to be crazy was locked up last night for investigation. He created a disturbance at Love's bakery Wednesday night and last night he tried to embrace several girls on the street.

Pepe Got a Growling.

Pepe, the little Spanish boy who accidentally shot a small companion Monday, was given a big growling by Judge Wilcox yesterday. The injured boy's father did not want to have Pepe prosecuted, as his uncle had promised to pay the doctor's bill for attendance on little Antonio, who was shot.

Shoe Company's Meeting.

A meeting of the men interested in the promotion of the Hawaiian Shoe and Leather Co. Ltd., was held at the Chamber of Commerce rooms yesterday. The result of the meeting was not of a flattering nature. Henry Hill, the promoter, declined to give the amount of stock subscribed and did not express himself as very enthusiastic over the project.

Taken Off Independent Ticket.

J. O. Carter, candidate for senate, and E. C. Macfarlane, for representative, both on the democratic ticket, and who were also on the independent ticket, were removed yesterday from the independent ticket by the executive committee of that party. The substitutes of these gentlemen are E. C. Roe for senator, Solomon Meheula for representative.

The following supplementary lists of candidates have been filed with the secretary of state: Third senatorial district, island of Oahu, Frank Pahi (Pahi), R. N. Boyd; Fourth representative district, island of Oahu, B. W. Aylett (Bila Eleka), K. C. Quinn (Kimo Kimi), J. W. Koola Keiki (Keiki), Jos. K. Clark (Koo Kalaka); Fifth representative district, island of Oahu, W. J. Coelho (Wilama Kuwela), John C. Lane (Keoni Lene), J. L. Kaulukou, S. K. Maboe.

Wilcox Denounced as a Hypocrite and Deceiver

That's the Record That Moreno, Former Minister, Gives to His Closest Friend.

George D. Gear Says That Wilcox is Not a Man of Steel, But of Steel—Tremendously Successful Meeting at the Orpheum.

BETTER late than never," said George D. Gear, as he rose to speak at the magnificent meeting of the republicans at the Orpheum last evening. Then he pulled from his pocket a letter from C. C. Moreno, once a minister of foreign affairs of Hawaii, of which this signal warning was the caption—"Better Late Than Never." "It took me twenty-one years to discover what I have just found out. Robert Wilcox is hypocrisy, mendacity, deceit and instability personified. Wilcox is a cunning and patient deceiver and deceived me for twenty-one long years. Wilcox has adopted all the vices of the Hawaiians and none of their virtues. Wilcox has repeatedly told me that the Hawaiians were too poor to send money for pushing their bill before congress, and I learned that the Hawaiians had sent him plenty of money, which he used exclusively for parading himself in Washington as an Hawaiian prince, as he did in Italy, though I introduced him to all simply as Mr. Wilcox.

"Mr. Wilcox wrote mendaciously to the Hawaiians that he was the man who fought, planned and passed the Hawaiian bill before congress. Messrs. Cayloose, Little and all the members of the territorial committee of the house and senate can testify to the contrary."

These words were a part of the speech made by George D. Gear. They constituted the keynote of the whole magnificent gathering. It was a great meeting and even democrats lifted their hats to it.

The theater was filled to overflowing and several thousands remained outside, where a tremendous overflow meeting was held.

It was a great meeting. The chairman, Lorrin Andrews, who is the president of the Young Men's Republican club, called the meeting to order. He said: "We are in the midst of a great political campaign, one which is exciting universal interest, as is demonstrated by the vast concourse here tonight. We are proud of the interest taken in the great questions of the day and in the success of the republican party."

At this time there were upon the platform L. J. McCandless, George D. Gear, Henry Waterhouse, William H. Hoopes, Col. J. H. Fisher, Charles Wilcox, Dr. Huddy, A. F. Gillilan, Judge Kaulukou, W. Elliott, John Lane, George R. Carter, P. L. Weaver and others.

And then the republican quartet appeared and sang:

On the sixth of next November, when the voting all is done,
And the independents all look lean and lank;

When the bonfires are a-burning and the victory is won,
You can look for Bobby Wilcox in the tank.

He'll be in there hiding, far away from broad daylight,
And he'll sneak out in the night;

Then he'll give a sickly, dry, dyspeptic, melancholy grin,
On the sixth of next November, when the news comes in.

When the sun goes down that evening and the votes are counted o'er,
Sam Parker will be standing right on the hurricane deck;

But you'll hear an awful moaning and a groaning 'long the shore,
From poor David, who'll be tangled in the wreck (up to his neck).

C. J. Coelho made the first and apparently an impassioned speech. He

He'll be snowed clear under, far away from broad daylight,
And he'll never see day light.

Then he'll cough a sickly, dry, dyspeptic, melancholy cough,
On the sixth of next November, when his head comes off.

C. J. Coelho made the first and apparently an impassioned speech. He

QUEEN'S HOSPITAL.

Regular Quarterly Meeting of the Trustees Held Yesterday.

The regular quarterly meeting of the trustees of Queen's hospital was held yesterday at the Chamber of Commerce rooms. The fourteen trustees present were Messrs. Schaefer, Dayton, Schmidt, Cleghorn, Lowrey, Waterhouse, Atherton, May, Wood, Campbell, Carter and Secretary Geo. W. Smith. The report of Attending Physician C. B. Cooper was read, showing the hospital to be in good condition.

The visiting committee for the ensuing year is Mrs. A. S. Cleghorn, A. R. Wood and A. J. Campbell.

The treasurer's semi-annual report was read showing receipts of \$35,000 and disbursements of \$22,000. It was decided by the trustees to discontinue the rule of treating Hawaiians at the hospital free of charge. The financial resources of the institution have been crippled somewhat in the changes incident to annexation and the loss of \$3,000 a year by the decision in the Book case.

DID NOT KEEP PROMISE.

Ramond Devauschelle Left Honolulu After Selling His Furniture.

Ramond Devauschelle did not keep the promise he made in open court the other day when he was before Judge Wilcox charged with deserting his wife. Instead of returning to her he decided all his interest in the household furniture to his brother Eugene in consideration of one dollar and love. The brother has begun suit under the deed to obtain possession of the property described therein and if he wins the suit it will mean the turning out of the street of Ramond's wife and little child. It is said that the husband has gone to the other islands taking with him another woman. He was formerly a police officer and was dismissed from the force on account of the way in which he treated his wife. His former brother officers are very much disgusted with the way he has acted and are talking of furnishing the deserted and penniless wife with money to fight the law suit brought against her by her husband's brother.